IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12282 of 2017

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Gramin L P G Vitrak Association (Bihar), an association registered under the Society Registration Act 1860 having Registration No. 595 of 2015-16, Registered Office at Indira Nagar, Road No.1, Postal Park, P.O.-G.P.O., P.S.-Jakanpur, District-Patna, through its Secretary, Rakesh Kumar. S/o Shivji Singh, Village & P.O.-Beriya, P.S.-Gopalpur, District-Patna, Bihar.

2. Rakesh Kumar S/o Shivji Singh, Village & P.O.-Beriya, P.S.-Gopalpur, District-Patna, Bihar.the Secretary of Gramin LPG Vitrak Association.

.... Petitioners

Versus

1. The Union of India through its Secretary, Ministry of Petroleum and Natural Gas, Shastri Bhawan, New Delhi.110001.
2. Indian Oil Corporation Ltd. through its Chairman-Cum-Managing Director, G-9, Ali Yavar Jung Marg, Bandra (East), Mumbai 400051.
3. The General Manager, Indian Oil Corporation Ltd., Bihar State Office, 5th Floor, Lok Nayak jai Prakash Bhawan, Dak Bunglow Chowk, Patna.
4. The Senior Area Manager, Indian Oil Corporation Limited, Marketing Division, Eastern Region, Indane Area Office, Patna, Shashi Bhawan, Exhibition Road, Patna.
5. Bharat Petroleum Corporation Ltd. through its Chairman-Cum-Managing Director, B.P.C.L., Bharat Bhawan, 4 & 6 Currimbhoy Road, Ballard Estate, P.B. No. 688 Mumbai 400001
6. The Area Marketing Manager, Bharat Petroleum Corporation Ltd. 3rd Floor, Ashiyana Chamber, Exhibition Road, Patna 800001
7. Hindustan Petroleum Corporation Ltd. through its Chairman-Cum-Managing Director, 17, Jamshedji Tata Road, Mumbai- 400020.
8. The Senior Regional Manager, Hindustan Petroleum Corporation Ltd. Patna LPG Regional Office, 6th Floor, LOk Nayak Jai Prakash Bhawan, Dak Bunglow Chowk, Patna.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 14040 of 2017

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Pankaj Kumar, Son of Haribansh Kumar, Resident of Mohalla- Near P.N.B. Bank Sherpur, Patna, P.S.- Maner, District- Patna.

.... Petitioner

Versus

1. The Union of India through Secretary, Ministry of Petroleum & Natural Gas, Shastri Bhawan, New Delhi 110001.
2. Indian Oil Corporation Ltd. through its Chairman-cum-Managing Director, G-9, Ali Yavar Jung Marg, Bandra (East), Mumbai- 400051.
3. The General Manager, Indian Oil Corporation Ltd., Bihar State Office, 5th Floor, Lok Nayak Jai Prakash Bhawan, Dak Bunglow Chowk, Patna.
4. The Senior Area Manager, Indian Oil Corporation Limited, Marketing Division, Eastern Region, Indane Area Office, Patna, Shashi Bhawan, Exhibition Road, Patna.
5. Bharat Petroleum Corporation Ltd through its Chairman-cum-Managing

Director, B.P.C.L., Bharat Bhawan, 4 & 6 Currimbhoy Road, Ballard Estate, P.B. No. 688 Mumbai 400001.
6. The Area Marketing Manager, Bharat Petroleum Corporation Ltd, 3rd Floor, Ashiyana Chamber, Exhibition Road, Patna 800001.
7. Hindustan Petroleum Corporation Ltd. through its Chairman-cum-Managing Director, 17, Jamshedji Tata Road, Mumbai- 400020.
8. The Senior Regional Manager, Hindustan Petroleum Corporation Ltd, Patna LPG Regional Office, 6th Floor, Lok Nayak Jai Prakash Bhawan, Dak Bunglow Chowk, Patna.

.... Respondents

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Appearance:

(In CWJC No.12282 of 2017)

For the Petitioners	:	Mr. Y.V.Giri, Sr. Advocate
		Mr. Sandeep Kumar Shahi, Advocate
		Mr. Ajit Kumar, Advocate
For the UOI	:	Mr. Arvind Kumar Tiwary, CGS
For the IOCL	:	Mr. Anil Kumar Jha, Sr. Advocate
		Mr. Sanat Kumar Mishra, Advocate
For the HPCL	:	Dr. Pankaj Kumar, Advocate
For the BPCL	:	Mr. Sanjay Singh, Advocate

(In CWJC No.14040 of 2017)

For the Petitioner	:	Mr. Ibrahim Kabir, Advocate
For the UOI	:	Mr. Arvind Kumar Tiwary, CGS
For the IOCL	:	Mr. Anil Kumar Jha, Sr. Advocate
		Mr. Anil Kumar Sinha, Advocate
		Mr. Amlesh Verma, Advocate
For the HPCL	:	Dr. Pankaj Kumar, Advocate
For the BPCL	:	Mr. Sanjay Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 17-11-2017

These two writ petitions involve a common relief and seek cancellation of the advertisement dated 17.06.2017 published on behalf of Respondent Oil Corporations (Respondent Nos. 2, 5 and 7) by which 974 new locations had been advertised for appointment of LPG Distributors/Gramin Vitraks in the State of Bihar; a direction to the Respondents to reconsider and revise the viability level of existing Rural LPG Distributors/Gramin Vitraks by fixing the Refill Ceiling Limit at 12,000 cylinders per month and Refill sale for feasibility limit at 6,000 cylinders per month; and a further direction to the respondents to determine and fix the operational area for Gramin Vitraks to cover all villages/cluster of villages falling within 15 kms from the boundary of the LPG Distributorship.

2. The pleadings on behalf of the parties as well as the stand taken by them are substantially common in both the writ petitions and hence for the sake of convenience, reference is made on the basis of the pleadings in CWJC No. 12282 of 2017.

3. Mr. Y.V. Giri, learned Senior Counsel, and Mr. Ibrahim Kabir, learned counsel appearing on behalf of the petitioners, submit that the action of the respondents in issuing the impugned advertisement for selection of LPG Distributors/Gramin Vitraks at as many as 974 new locations runs contrary to the stated policy of the respondent Oil Companies. It is submitted that through the Brochure on Unified Guidelines issued in July, 2016, the Gramin Vitraks were assured that they would service LPG customers located in the villages falling within 15 Km from the boundary of the concerned LPG Distributorships and the area specified by the respective OMCs. It is however submitted that selection of the proposed LPG Distributors/Gramin Vitraks may reduce the area of operation under the present control of the petitioners and thus severely impact the viability of their businesses. A chart has been prepared (Annexure-10) to illustrate the adverse effect that would result from the fresh selections. It is estimated that fresh selections are likely to reduce the distance between LPG Distributorships to as low as 1 Km from their respective boundaries. In some cases, it would cause reduction of the number of consumers attached with an existing LPG Distributorships to only 427. The petitioners apprehend as against the originally anticipated net

monthly income of Rs. 7,664/-, the petitioners' income is likely to reduce substantially as the census of 2011 remains the base. The petitioners' who are existing LPG Distributors/Gramin Vitraks and stake-holders were not invited for discussions and deliberations prior to issuance of the Unified Guidelines in July, 2017 and the advertisement was issued without having regard to the fact that a representation dated 20.03.2017 filed by the petitioners was pending before the Ministry of Petroleum & Natural Gas, Government of India, New Delhi (Annexure-7).

4. Learned counsel for the respondents vehemently opposed the writ petitions, submitting that the apprehension of the petitioners is completely misplaced and misconceived. As a matter of fact, the case of the petitioners is guided by the Rajiv Gandhi Gramin LPG Vitrak (RGGLV) Scheme and the Manual issued in December, 2014 (Annexure-R-2/2) states that the policy for selection of location is broadly based on the potential of an average monthly sale of 600 LPG cylinders of 14.2 kgs and 1800 customers with per capita consumption of about 5 kg per month. It was further provided that the OMCs should plan additional RGGLVs, as and when the existing RGGLVs reach an average domestic refill sale equivalent to about 1200 cylinders of 14.2 kg capacity per month and there is a further potential for sale of at least another 600 cylinders of 14.2 kgs per month. The respondents in turn have also enclosed a chart (Annexure-R-2/1) indicating the average sales based on actual figures and the number of consumers, which shows that the sales far exceed the assurance given under RGGLV Scheme. It is therefore, submitted that selection of additional LPG Distributors/Gramin Vitraks is not likely to have much adverse effect on the business of the petitioners. In any event, the

selection of fresh Distributorships and Gramin Vitraks is a matter of policy and the decision in this regard has been taken after due consideration of all material aspects and is in the larger public interest with an aim of ensuring availability of LPG to each and every household.

5. Having heard the parties and on a consideration of the materials on record, this Court is not inclined to interfere in the matter. The thrust of submissions on behalf of the petitioners is based on para 1.1.iii of the Unified Guidelines of 2016. However, a careful reading thereof shows that the term 'Rural Area' was intended to 'generally' cover all the villages within 15 Kms. from the boundary limits of the distributorships. Clearly therefore, the 15 Kms. limit was not made inflexible and unexceptionable. Under the RGGLV Manual of December, 2014, the OMCs were required to plan additional RGGLVs as and when existing RGGLVs reached the limit of 1200 cylinder refill sale if there was a potential for refill sale of another 600 cylinders per month. The sale chart enclosed by the respondents in their counter affidavit indicates a monthly refill sale far in excess of that figure for the quarter of April to July, 2017. The Unified Guidelines in December 2016 did not provide for identification of new locations only in virgin market rather it had to be on the basis of the refill sale potential, and this, *prima facie*, indicates that selection of fresh LPG Distributors/Gramin Vitraks does not violate the right and assurance given to the petitioners. Detailed feasibility study with reference to the number of households and existing LPG coverage is also said to have been made and the area of operation duly incorporated in respect of the newly identified locations before the decision was finally taken by the respondents.

6. It is relevant to take note that a similar advertisement dated 16.06.2017 had been challenged before the Gujarat High Court by the All India LPG Distributors Federation (Gujarat) and others, which was dismissed by a learned Single Judge of that Court. The matter was further urged in appeal, but did not find favour also with the Division Bench, and the Letters Patent Appeal stood dismissed with the following observations -

> "*It is true that now there is no bar to issue appropriate directions in exercise of powers under Article 226 of the Constitution of India even in the matters relating to contracts, but whether the action is arbitrary or not, and whether interference is called for in a given case is a matter, which is required to be considered with reference to facts of each case. When it is case of the respondents that impugned advertisement is issued only to reach virgin areas to penetrate rural areas for supply of LPG gas, which area is not attended to by the petitioners, it cannot be said that action of the respondents is either arbitrary or illegal. There cannot be any dispute with regard to proposition of law laid down by Hon'ble Supreme Court in the case of Mahabir (supra), but at the same time we are of the view that there is no illegality or arbitrariness on the part of the respondents in issuing advertisement inviting applications for rural areas where there is no distributor for supply of LPG gas. We are of the view that the judgment in the case of Mahabir (supra) would not render any assistance to the petitioners in support of their case.*"

It was further observed that the purpose of advertising new locations for LPG distributorships is to reach out to the rural areas in the State. As such, it expressed the view that such a step taken by the respondents was in the larger public interest.

7. This Court is of the view that in matters of policy, the scope for judicial review is rather limited. The submissions of the petitioners that fresh selection of LPG Distributors/Gramin Vitraks is likely to impact their businesses adversely cannot be allowed to override or undermine the larger public interest, furtherance of which the Oil Companies are required to ensure by acting in a manner that ensures supply and availability of LPG to each and every household. A business concern must decide its own viability based on commercial considerations. Therefore, no case for interference is made out. The writ petitions stand dismissed.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	20.11.2017
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